

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

LONGMONT UNITED HOSPITAL

Employer

and

Case 27-RC-275868

**NATIONAL NURSES ORGANIZING
COMMITTEE/ NATIONAL NURSES UNITED,
AFL-CIO (NNOC/NNU)**

Petitioner

NOTICE TO SHOW CAUSE

Pursuant to a Decision and Direction of Election, a mail ballot election of the Longmont United Hospital (Employer) registered nurses employed at its facility in Longmont, Colorado was conducted between June 15 and July 7, 2021¹ to determine whether such employees wished to be represented by the National Nurses Organizing Committee/ National Nurse United, AFL-CIO (NNOC/NNU) (Petitioner). Following the election, a hearing was held before a Hearing Officer on August 31 and September 1 by videoconference, where the Hearing Officer heard testimony and received documents into evidence.

On October 20, the Hearing Officer issued his Report on Challenged Ballots concerning, in part, the validity of a ballot cast by employee Mysti Schalamon (Schalamon). The Hearing Officer's Report referenced Schalamon's driver's license, a version of which was entered into evidence as Union Exhibit 6. The driver's license was submitted into evidence by Petitioner, and considered by the Hearing Officer, as an exemplar of Schalamon's signature. While the driver's license in Union Exhibit 6 was partially redacted, certain sensitive personally identifiable information (SPII), including Schalamon's date of birth (also as noted in the expiration date of

¹ Unless otherwise stated, all dates herein refer to 2021.

the license), address, and personal information including height, weight, and eye color were not redacted prior to its receipt into the record. Subsequently, on November 3, the Employer filed exceptions and a supporting brief to the Hearing Officer's Report, which included an additional copy of the partially redacted driver's license, and which was attached as Exhibit B to its supporting brief. In that document, Schalamon's date of birth (also as noted on the expiration date), and personal information including height, weight, and eye color were not redacted.

IT IS HEREBY ORDERED that the parties show cause, as to why the versions of Schalamon's driver's license entered into evidence as Union Exhibit 6 and submitted with the Employer's supporting brief to its exceptions as Exhibit B, should not be redacted to obscure Schalamon's date of birth (including the date and month as it appears in the expiration date), address, height, weight, and eye color. Any such submission must be in writing and received in this office by no later than December 7, 2021, with a copy also being served on all other interested parties.

Dated: December 2, 2021

/s/ Paula S. Sawyer

PAULA SAWYER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

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**NATIONAL NURSES ORGANIZING
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Petitioner

EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE

Longmont United Hospital ("Longmont United" or "Employer"), by and through its attorneys Sherman & Howard L.L.C., responds to the Board's December 2, 2021 Notice to Show Cause as follows:

1. Pursuant to the Region's Decision and Direction of Election, a mail ballot election was conducted between June 15 and July 7, 2021 to determine whether the employees wished to be represented by the National Nurses Organizing Committee/National Nurse United, AFL-CIO (NNOC/NU) (Petitioner).
2. Following the election, a hearing was held before a Hearing Officer on August 31 and September 1, 2021, by videoconference, wherein the Hearing Officer heard testimony and received documents into evidence regarding numerous ballot challenges by the Board Agent and Longmont United.

3. During the Hearing, the Union offered Union Exhibit 6, which included a photocopy of Ms. Schalamon's (the Union's witness) driver's license and social security card. The driver's license and social security card were admitted by the Hearing Officer.
4. The driver's license and social security card in Union Exhibit 6 were admitted partially redacted.
5. On September 1, 2021, the Hearing Officer closed the Hearing Record with the partially redacted Union Exhibit 6 admitted into the Record.
6. On December 2, 2021, the Regional Director issued a Notice to Show Cause, requesting "the parties show cause, as to why the versions of Schalamon's driver's license entered into evidence as Union Exhibit 6 and submitted with the Employer's supporting brief to its exceptions as Exhibit B, should not be redacted to obscure Schalamon's date of birth (including the date and month as it appears in the expiration date), address, height, weight, and eye color."


RESPONSE TO SHOW CAUSE ORDER

1. The Regional Director is requesting to modify an existing Exhibit, Union Exhibit 6. The Regional Director's proposal materially alters the admitted exhibit, and thus, constitutes an entirely new proposed exhibit.
2. Neither Party was provided an opportunity at the Post-Election Hearing to examine any witness regarding the new exhibit or the proposed redactions.
3. The Hearing Officer mischaracterized the contents of the Exhibit in his Report and Recommendation.
4. It is fundamental to a fair and complete hearing that the Regional Director may not alter record evidence without reopening the record. The Parties must be provided the

opportunity to examine a witness and make a record regarding this new evidence sought to be introduced into the closed record.

5. The Regional Director's attempt to alter the evidence without a hearing is a denial of both Parties' right to due process.
6. Accordingly, the Regional Director's modified exhibit should not be admitted into the record as a new exhibit without reopening the hearing and offering the exhibit pursuant to the Federal Rules of Evidence and the Board's Rules and Regulations.
7. Longmont United, contemporaneously with this Response, is filing a Motion to Reopen the Record pursuant to Section 102.65(e)(1).

Dated: December 7, 2021



Patrick R. Scully
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2021, a true and correct copy of the foregoing **EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE** was E-filed with the NLRB E-Filing System and served via e-mail to the following:

Paula S. Sawyer
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via e-mail

s/ Mary Ann Meise
Mary Ann Meise, Practice Assistant

**UNITED STATES OF AMERICA
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LONGMONT UNITED HOSPITAL

Employer

Case No. 27-RC-275868

and

**NATIONAL NURSES ORGANIZING
COMMITTEE/NATIONAL NURSES UNITED,
AFL-CIO (NNOC/NNU)**

Petitioner

EMPLOYER’S MOTION TO REOPEN THE RECORD

Longmont United Hospital (“Longmont United” or “Employer”), by and through its attorneys Sherman & Howard L.L.C., moves the Board to reopen the record, and states as follows:

1. Section 102.65(e)(1) of the NLRB’s Rules and Regulations sets forth that “[a] party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record... No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any Regional Director or Hearing Officer with respect to any matter which could have been but was not raised pursuant to any other section of these Rules except that the Regional Director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration.

2. Section 102.65(e)(1) further states that “[a] motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo*, the prejudice

to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited.”

3. On December 2, 2021, the Regional Director issued a Notice to Show Cause, requesting “the parties show cause, as to why the versions of Schalamon’s driver’s license entered into evidence as Union Exhibit 6 and submitted with the Employer’s supporting brief to its exceptions as Exhibit B, should not be redacted to obscure Schalamon’s date of birth (including the date and month as it appears in the expiration date), address, height, weight, and eye color.”

4. The Regional Director intends to alter Union Exhibit 6 and introduce new evidence without a hearing or the opportunity to be heard.


5. The Regional Director must allow the Parties, including Longmont United, the opportunity to question a witness regarding any modifications and otherwise make a record regarding this new evidence. To deny such right would constitute a denial of Longmont United’s due process.

6. The additional evidence Longmont United would seek to adduce is limited to the authenticity of any proposed exhibit entered into the record.

7. The Regional Director seeks to modify the record *sua sponte*. Such modification without due process exceeds the Regional Director’s authority.

8. The Regional Director must reopen the record and afford the parties due process before admitting this new evidence. This is the Employer's only opportunity to make a record regarding this new evidence.

Dated: December 7, 2021



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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2021, a true and correct copy of the foregoing **EMPLOYER'S MOTION TO REOPEN THE RECORD** was E-filed with the NLRB E-Filing System and served via e-mail to the following:

Paula S. Sawyer
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Nicole Daro, Legal Counsel
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via e-mail

s/ Mary Ann Meise

Mary Ann Meise, Practice Assistant

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

NATIONAL NURSES ORGANIZING)
COMMITTEE/ NATIONAL NURSES)
UNITED, AFL-CIO (NNOC/NU))
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Petitioner,)
)
and)
)
LONGMONT UNITED HOSPITAL,)
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Employer.)
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_____)

Case 27-RC-275868

**RESPONSE TO ORDER TO SHOW CAUSE
BY PETITIONER NATIONAL NURSES ORGANIZING COMMITTEE/
NATIONAL NURSES UNITED, AFL-CIO (NNOC/NU)**

Petitioner National Nurses Organizing Committee (“Union” or “NNOC”) submits this Response to the Regional Director’s Order to Show Cause dated November 2, 2021, directing the parties to show cause why a redacted image of a driver’s license submitted at hearing as Union Exhibit 6 and as Exhibit B to the Employer’s Brief in Support of Exceptions should not be further redacted to obscure certain information which the Regional Director characterizes as sensitive personally identifiable information. Based on the Union’s research, it does not appear that the additional redactions, though prudent, are required by any applicable agency rule. Therefore, the Union’s position is that the exhibits do not require further redaction. However, the Union does not object to further redaction of the exhibits to safeguard the privacy of the witness, as neither party would be prejudiced by such measures.

I. Argument

A. Union Exhibit 6

Mysti Schalamon is a Registered Nurse employed at Longmont United Hospital, whose eligibility to vote is not in dispute. Respondent Longmont United Hospital (“Employer”) challenged Schalamon’s ballot, taking the position that her signature does not appear on the ballot envelope. At the hearing on challenges, the Union introduced Union Exhibit 6, containing images of Schalamon’s driver’s license and social security card as exemplars of Schalamon’s signature. The Union had obtained unredacted versions of the images from the Employer in response to a subpoena for documents containing Schalamon’s signature. Prior to introducing Union Exhibit 6, the Union redacted Schalamon’s driver’s license number from the driver’s license, and social security number from the social security card.

On August 19, 2021, in advance of the hearing, the Hearing Officer provided the parties with a Zoom Hearing Invitation with Instructions and Protocols. In that document, the parties were instructed to redact any Sensitive Personal Identifying Information (“SPII”), “including social security numbers, driver’s license numbers, and credit card and financial account numbers, from exhibits.” (August 19 Zoom Hearing Invitation at p. 5) Consistent with these instructions, the Union did redact the social security and driver’s license numbers from Exhibit 6.

The NLRB’s E-Filing System User Guide (available at <https://apps.nlr.gov/myAccount/assets/E-Filing-System-User-Guide.pdf>) “discourages” parties from e-filing documents that contain SPII. The User Guide (and screen shots of the NLRB e-filing system contained within it) defines SPII as “a document containing a person’s name PLUS one or more of the following: Date of Birth; Social Security Number; Driver’s License Number; Financial Account Number; Credit or Debit Card Number.” (User Guide at p. 16.) As noted

above, the Union did redact the driver's license and social security numbers from the exhibit. The Union did not, however, redact the date of birth appearing on the driver's license. The User Guide is not applicable to Union Exhibit 6, since it was introduced as a hearing exhibit and not e-filed with the agency.

Likewise, the Terms & Conditions for NLRB E-Filing and E-Service (available at <https://apps.nlr.gov/myAccount/#/FileCaseDocument/TermsConditions>) contain a definition of SPII that includes the above-listed items, and also "biometric data." Although not applicable to hearing exhibits, "biometric data" could include height, weight, and eye color, which appears in Union Exhibit 6. The Union is unaware of any document issued publicly by the NLRB that suggests redaction of employees' addresses in documents filed with the agency.

Although Union Exhibit 6, as accepted into evidence by the Hearing Officer did not violate any applicable instructions, the Union does not object to it being further redacted. None of the information addressed in the Order to Show Cause is relevant to any dispute at issue in this case, and the redaction of the information would not prejudice either party.

B. Employer Exhibit B

Respondent appended an Exhibit B to its Brief in Support of Exceptions, which it e-filed with the Regional Director using the NLRB's e-filing system. This exhibit was offered in response to the Hearing Officer's finding that the record evidence did not support Respondent's claim, made in its post-hearing brief, that Employer's Exhibits 6 and 7 contained "every signature Longmont United has on file for Ms. Schalamon." (Hearing Officer's Report at n. 7) Exhibit B to its Brief in Support of Exceptions contains, among other documents, the same images that were provided to the Union in response to a subpoena for all documents containing Ms. Schalamon's signature, which the Union then redacted and introduced as Union Exhibit 6. In

Employer Exhibit B, the images are redacted to obscure the driver's license and social security numbers as well as the RN's address. The RN's date of birth and biometric data were not redacted. As this document was e-filed, it is subject to the Terms and Conditions discussed above, which require redaction of such information.

II. Conclusion

For the foregoing reasons, the Union maintains that Union Exhibit 6 does not need to be further redacted. However, the Union does not object to the Regional Director redacting the information referenced in the Order to Show cause in order to safeguard the privacy of the employee. Neither party will be prejudiced by such action.

Dated: December 7, 2021

Respectfully submitted,

NATIONAL NURSES ORGANIZING
COMMITTEE/NATIONAL NURSES UNITED,
AFL-CIO (NNOC/NNU)
LEGAL DEPARTMENT

/s/ Nicole Daro
Nicole Daro
Legal Counsel

Counsel for Petitioner
NNOC/NNU

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years and that my business address is 155 Grand Avenue, Oakland, California 94612.

On the date below, I served the following document:

**RESPONSE TO ORDER TO SHOW CAUSE
BY PETITIONER NATIONAL NURSES ORGANIZING COMMITTEE/
NATIONAL NURSES UNITED, AFL-CIO (NNOC/NU)**

via Electronic Mail as follows:

Patrick R. Scully and James S. Korte
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jkorte@shermanhoward.com

***Counsel for Employer
Longmont United Hospital***

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 7, 2021, at Oakland, California.

/s/ Rob Craven
Rob Craven

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COMMITTEE/ NATIONAL NURSES
UNITED, AFL-CIO (NNOC/NU)**

Petitioner

**SUPPLEMENTAL DECISION ON CHALLENGES AND
DIRECTION ON CHALLENGES**

Pursuant to a Decision and Direction of Election, an election was conducted by mail beginning on June 15, 2021 and concluding on July 7, 2021,¹ in a voting group of the Longmont United Hospital (Employer) registered nurses employed at its facility in Longmont, Colorado, to determine whether such employees wished to be represented by the National Nurses Organizing Committee/ National Nurses United, AFL-CIO (NNOC/NU) (Petitioner).² The tally of ballots prepared at the conclusion of the mail-ballot election on July 7 showed that of the approximately 229 eligible voters, 93 votes were cast for and 84 votes were cast against the Petitioner, with 15 challenged ballots, a number sufficient to affect the results of the election.³ (Bd. Exh. 1(c), p. 1.) There were four (4) void ballots. (Id.)

The Employer timely filed an objection that the Petitioner engaged in solicitation of mail ballots during the voting period, and in my Decision on Challenges and Objections I overruled the Employer's objection. I further sustained the challenges to four (4) ballots, and ordered that the ballots of four (4) challenged registered nurse educators be opened and counted.⁴

On August 13, the ballots of the four (4) challenged registered nurse educators were opened and counted, and a revised tally of ballots was prepared. The revised tally of ballots showed that 93 votes were cast for and 88 votes were cast against the Petitioner. The seven (7) remaining unresolved challenged ballots were still determinative of the results of the election.

¹ All dates herein are in 2021, unless specified otherwise.

² The Petitioner's exhibits in this proceeding were labeled as "Union" exhibits and shall be referred to as such.

³ In this decision, citations to the hearing transcript appear as "Tr. [page numbers]." Citations to the Employer's exhibits appear as "Er. Exh.[exhibit number]," and citations to Board exhibits appear as "Bd. Exh. [exhibit number]." Citations to the Hearing Officer's Report on Challenges appear as "HOR. [page numbers]."

⁴ Pursuant to Section 11364.9 of the Casehandling Manual, a request for review to the determination to open and count those ballots was due by August 9, 2021. No request for review was filed.

On October 20, the Hearing Officer issued a Report on Challenged Ballots (Hearing Officer's Report) in which he recommended overruling the Employer's challenge to the ballot of Mysti Schalamon (Schalamon) and the Petitioner's challenges to the ballots of the five (5) house supervisors: Kirsten Belina (Belina), Natalia Bennell (Bennell), Emily Kellogg (Kellogg), Corin Schrock (Schrock), and Vickie Stevens (Stevens). The Hearing Officer recommended that the Employer's challenge to the ballot of Christina Aangeenbrug (Aangeenbrug) be sustained. (HOR at 18.)⁵

On November 3, the Employer timely filed ten (10) exceptions and a supporting brief to the Hearing Officer's Report, maintaining that the Hearing Officer erred in overruling the challenge to Schalamon's ballot and in making certain procedural rulings during the course of the hearing, thereby obstructing the Employer's due process rights resulting in irreparable harm.⁶ On November 15, the Petitioner filed an answering brief in response to the Employer's exceptions.

⁵ In his report, the Hearing Officer deferred to the Regional Director a ruling over the Employer's motion to overrule the Board Agent challenges regarding the house supervisors, noting that the Regional Director had directed a hearing on the issue. This is part of the Exception No. 10 filed by the Employer. The Hearing Officer's Report resolved those challenges in favor of the Employer, thereby recommending that the challenges be overruled. As no exceptions have been filed by either party on the challenged ballots cast by the house supervisors, and I have adopted the Hearing Officer's recommendation, the issue is moot. Further, the portion of Employer's Exception 10 regarding curing questions relating to the house supervisors is also moot.

⁶ The Employer electronically filed two documents with its exceptions that it identified as Exhibits A and B, requesting that the documents be made part of the record, which is opposed by the Petitioner in its answering brief. The documents include a subpoena served on the Employer and the personnel file for voter Mysti Schalamon. Inasmuch as the Hearing Officer's Report has issued and the submissions include additional documents not previously considered by the Hearing Officer in this proceeding, they will not be admitted into the record. To the extent that the documents are being produced to demonstrate that the entirety of the personnel file for Mysti Schalamon was produced to the Petitioner and that Schalamon's signatures contained therein were introduced into the record by the Employer (Er. Exh. 6 and 7) and the Petitioner (Un. Exh. 6), that the record might not contain every signature maintained by the Employer is not a material issue to the determination and there is no contention that the Employer failed to produce subpoenaed documents pertaining to Schalamon. That the Hearing Officer concluded that Er. Exh. 6 and 7 contained exemplars is a true statement, and the signatures on those forms show that Schalamon used a "squiggle" signature. The Petitioner introduced the driver's license (with Social Security card) as its exhibit, which was a record maintained by the Employer, and the license bears a different signature. Further, the Employer's Exhibit B that was e-filed with its brief in support of its exceptions includes documents that were not fully redacted to remove confidential information, such as account information.

A Notice to Show Cause issued as to why information that appears on the driver's license that was received into the record (Un. Exh. 6) and as it appeared in Exhibit B to the Employer's brief on exceptions, should not be redacted to remove personal information including date of birth, biometric data, and address. The Petitioner does not object to the redaction of either of the documents to remove the date of birth, biometric data, and address. The Employer asserts in its response that such alteration is not permissible as it materially alters the admitted exhibit, and filed a motion to reopen the record to examine the witness about the proposed alteration of the documents and any new evidence that might be obtained. No party has indicated how this personal information on the driver's license is relevant to the issues in this proceeding and I do not find such data to be relevant. Under the circumstances, I shall redact Un. Exh. 6 to remove the date of birth and personal biometric data. A copy of the redacted page shall be provided to the parties and substituted in the record. Inasmuch as Employer's Exhibit B filed with its brief in support of exceptions is not part of the record, I will not redact the copy of the driver's license included therein. Further, I am denying the Employer's motion to reopen the record to examine the witness about the removal of such data from Un. Exh. 6, to elicit testimony about Exhibit B to its brief on exceptions, or to inquire about the documents' authenticity, as this is not an extraordinary circumstance warranting reopening the record under Section 102.65(e)(1) of the Board's Rules and Regulations.

No party having taken exceptions to the Hearing Officer's findings regarding the eligibility of house supervisors Belina, Bennell, Kellogg, Schrock, and Stevens, or to the ineligibility of Aangeenbrug, I affirm the Hearing Officer's findings concerning these ballots.⁷

I have reviewed the record in light of the exceptions and briefs, and after carefully considering the evidence and argument presented by the parties, I find that the Hearing Officer's rulings made at hearing are free from prejudicial error, and are hereby affirmed. As discussed below, I agree with the Hearing Officer that the challenge to the ballot cast by Schalamon should be overruled.

I. THE CHALLENGES

The names of the seven challenged voters, the party challenging each voter, and that party's reason for doing so, are as follows:

NAME	CHALLENGER	REASON
Christina Aangeenbrug	Employer	No longer employed in the unit
Mysti Schalamon	Employer	Ballot not signed
Kirsten Belina	Board Agent	Decision and Direction of Election
Natalia Bennell	Board Agent	Decision and Direction of Election
Emily Kellogg	Board Agent	Decision and Direction of Election
Corin Schrock	Board Agent	Decision and Direction of Election
Vickie Stevens	Board Agent	Decision and Direction of Election

II. THE EMPLOYER'S EXCEPTIONS AND THE PARTIES' POSITIONS

The Employer filed ten exceptions and a supporting brief to the Hearing Officer's recommendation to overrule its challenge to Schalamon's ballot, arguing that Schalamon's ballot should not be counted because, contrary to Schalamon's testimony, the record evidence shows that the name on the yellow ballot envelope⁸ returned with her ballot was printed rather than signed. The Employer does not dispute that Schalamon was eligible to vote or that it was she that

⁷ The ballots cast by house supervisors Belina, Bennell, Kellogg, Schrock, and Stevens were challenged because the issue of their eligibility was deferred to the challenge procedure. The Petitioner asserted they were supervisors within the meaning of the Act and the parties did not agree on their status. The record shows that these house supervisors are R.N.s who at times perform patient care and, absent record evidence that they possess supervisory authority, they are included in the R.N. unit.

⁸ Hereafter, the yellow ballot-envelope will be referred to as the "ballot envelope."

cast her ballot. Rather, it contends that the relevant issue is whether the writing resembles Schalamon's signatures that appear in the Employer's documents or whether the name is printed. The Employer asserts that the Hearing Officer impermissibly relied on Schalamon's testimony and a signature exemplar that was created after the election. The Employer also contends that some of the Hearing Officer's rulings during the course of the hearing were in error, thereby denying the Employer its right to due process, and ultimately obstructing the Employer from being able to make a complete record.

The Hearing Officer credited Schalamon's testimony insofar as the writing appearing on the back of the ballot envelope that she submitted was her signature, and not her printed name. In doing so, the Hearing Officer noted that the written name on the ballot did not resemble the approximately sixteen (16) exemplars of Schalamon's signature in Employer Exhibits 6 and 7, but found that the exemplar of Schalamon's signature on a 2013 driver's license produced by the Employer pursuant to subpoena and entered into the record as Union Exhibit 6, showed that Schalamon's signature had not remained consistent.⁹ The Hearing Officer also noted the difference between the written name appearing on the ballot envelope and the *printed* names appearing on the forms in Employer Exhibits 6 and 7. Based on the sum of this evidence, the Hearing Officer concluded that Schalamon's signature had varied and been inconsistent over the years, and that the record evidence supported that Schalamon's written name on the ballot envelope constituted a signature and was not printed. In that regard, he found that the written name did not "spell and print every letter of her first name, indicating that Schalamon signed rather than printed her name. Specifically, the name on the ballot envelope starts with Schalamon's first initial followed by her last name in cursive writing." (HOR p. 9.)

The Employer's ten enumerated exceptions and supporting brief essentially contend that the Hearing Officer erred by: (a) crediting Schalamon's testimony,¹⁰ (b) denying the Employer's right to due process by certain of his rulings,¹¹ and (c) improperly applying the existing law to find that Ms. Schalamon's envelope was signed rather than printed.

The Employer contends that the Hearing Officer's credibility determination was unsubstantiated and mistaken, arguing that Schalamon's testimony was clearly biased in favor of the Petitioner, and was inconsistent and self-contradictory in nature. In support of its claim, the Employer cites parts of Schalamon's testimony on cross-examination regarding her pre-hearing discussions with the Petitioner's attorney, and her testimony on direct examination that the

⁹ In Exception 5, the Employer alleges that the Hearing Officer erred by finding that Employer Exhibits 6 and 7 did not constitute *all* of Schalamon signatures in the Employer's possession. However, the Employer concedes in its brief that Union Exhibit 6, which includes a copy of Schalamon's signed driver's license, and which was not included in Employer's Exhibits 6 and 7, was produced to the Petitioner pursuant to subpoena from its own records. Accordingly, the Hearing Officer's statement was not erroneous.

¹⁰ Employer's Exception 1.

¹¹ The Employer's exceptions to these rulings by the Hearing Officer appear to be encompassed by Exceptions 3, 8, and 10. Exception 3 concerning cross examination is discussed in the Employer's brief in support of the exceptions and appear to also be related to Exceptions 8 and 10, which are not explicitly detailed in its brief in support of those exceptions, only being mentioned by reference to its September 13 post-hearing brief. The Employer's arguments relating to Schalamon's ballot are nevertheless addressed herein, counter to the Petitioner's position that they be dismissed.

written name on her driver license,¹² entered into evidence as Union Exhibit 6, was her signature, while at the same time replying on direct that the copy of her Social Security card, also in Union Exhibit 6 “does not have my signature, it has my name on it.” (Tr. 107 22-25).¹³

In response, the Petitioner contends that Schalamon’s testimony was credible, pointing to the fact that she never denied or concealed that she had contact with Petitioner’s counsel prior to the hearing and that she had discussed the “issues of the case” with Petitioner’s counsel. The Petitioner argues that while the Employer claims that Schalamon’s answers on cross-examination were contradictory, they were in fact consistent. Rather, the Petitioner contends that it was the nature of Employer Counsel’s questions at hearing, which differed in specificity and detail, that elicited truthful and different responses from Schalamon.

Ultimately, the Hearing Officer credited Schalamon’s testimony that the written name on her ballot envelope was her signature and not her printed name. In making his credibility determination, the Hearing Officer noted Schalamon’s testimony that “when [she is] in a hurry” she uses a signature with “a little bit of an *M* with a little squiggly at the end,” testimony that was corroborated by the documents offered into evidence as Employer’s Exhibits 6 and 7, and which were shown to Schalamon only after she gave her testimony on that point. (HOR p. 8.)¹⁴ Importantly, the Hearing Officer, in footnote 8 of his report, notes that Union Exhibit 2 was introduced solely as another exemplar of Schalamon’s signature, and the declaration entered into the record is not cited by the Hearing Officer as a basis for finding that the writing on the ballot envelope is Schalamon’s signature. Thus, there is no indication that Union Exhibit 2 was given any weight in his ultimate determination.

The Employer contends in its exceptions and supporting brief that the Hearing Officer denied it proper due process. More specifically, the Employer argues that the Hearing Officer erred by (1) improperly revoking Paragraph D of its initial subpoena to the Petitioner, entered into evidence as Bd. Ex. 4, seeking “[t]he original declaration attached to the Union’s Statement of Position and correspondence transmitting the same,” (2) limiting cross-examination regarding the declaration, and (3) improperly revoking its second subpoena issued to the Petitioner during the hearing.

The Petitioner contends that the Employer’s exceptions as related to (1) and (3) above should be dismissed as they were not referenced in the Employer’s supporting brief. The Petitioner further counters, with regard to the Employer’s exception to the Hearing Officer limiting cross-examination of Schalamon, that the Hearing Officer sustained only the Petitioner’s objection as they pertained to questions about the identity of the coworker that Schalamon

¹² Employer’s Exception 7 claims that the Hearing Officer erred in finding that Schalamon signed her driver’s license in 2013. As noted by the Petitioner in its response, the exception misstates the finding made by the Hearing Officer, which was simply that the driver’s license was *issued* in 2013, a finding that is apparent from the face of the document.

¹³ Employer’s Exception 6 raises the issue of the Hearing Officer failing to address Schalamon’s testimony regarding her Social Security card in his report and is discussed *infra*.

¹⁴ Employer’s Exception 2 contends that the Hearing Officer found that “the name on Schalamon’s ballot does not resemble any of Schalamon’s prior known signatures.” However, its brief in support contends that the Hearing Officer only found the name on Schalamon’s ballot to be “a signature.” (ER Brief p. 10). In fact, the Hearing Officer found that the record evidence demonstrated that “the signature on the mail ballot envelope [did] not resemble any of Schalamon’s prior known signatures admitted in the record.” (HOR p. 9.)

testified gave her the declaration for signature, pursuant to the principal that “the confidentiality interests of employees have long been an overriding concern to the Board,” and that an employer violates the Act by seeking to obtain the identity of employees who engage in union activity.” *National Telephone Directory Corp.*, 319 NLRB 420, 421 (1995). The Petitioner asserts that no other line of questioning was cut off by the Hearing Officer.

Finally, the Employer’s exceptions and supporting brief argue that the Hearing Officer’s finding that Schalamon signed her ballot is not based on extant law and is in error. The Petitioner, in turn, argues that the Hearing Officer correctly applied the law and objective evidence in finding Schalamon’s ballot to be valid.

III. ANALYSIS

A. Applicable case law regarding the signing of the ballot envelope.

The Board has long required that employees sign the outer envelope in which the ballot is returned to the regional office to safeguard the integrity of mail-ballot elections. *Northwest Packing Co.*, 65 NLRB 890, 891 (1946). The purpose of this requirement is so that the ballot can be identified as cast by an eligible employee. *Id.* Consistent with this principle, the Board will void a ballot if the employee’s name is only printed on the envelope rather than signed. *Thompson Roofing, Inc.*, 291 NLRB 743, 743 fn. 1 (1988) (ballot voided where printed name was compared to employee’s signatures on file, which showed that the employee normally signed his name when so instructed). This is so, the Board stated, because the signature requirement is necessary “to preserve the integrity of the election process.” *Id.* Applying the foregoing principles in an unpublished Order, the Board recently remanded a case for hearing where the signature on a ballot envelope varied from known signature examples in order for a determination to be made on whether the ballot was cast by an eligible voter. *College Bound Dorchester, Inc.*, Case 01-RC-261667, 2021 WL 2657318 (June 25, 2021).

Here, no party has asserted that Schalamon is an ineligible voter or that the ballot at issue was not cast by her. Rather, the issue in dispute is whether the written name on her ballot envelope is printed as the Employer contends or if it is indeed her signature. Section 11336.5 of the Board’s Casehandling Manual (Part Two) Representation Proceedings addresses how to handle unsigned ballots or where names are printed. The Casehandling Manual states:

Ballots that are returned in envelopes with no signatures or with names printed rather than signed should be voided. *Thompson Roofing, Inc.*, 291 NLRB 74[3] (1988). With regard to a question about whether a name on an envelope is printed, should there be no agreement among the parties and if the Board agent determines that the name is printed, the Board agent should declare the ballot as void. However, a party may contest the Board agent’s determination and if that occurs the Board agent should treat the ballot as a challenged ballot.

In this case, the Board agent did not void the ballot and it is the Employer that contended Schalamon’s ballot was not signed.

Inasmuch as the identity of the voter who cast the ballot in this case is not in question, Schalamon was on the list of eligible voters, and she identified the writing on her ballot envelope as her signature, the challenge to Schalamon's ballot should be overruled. The Board's instruction for sending the matter to a hearing in *College Bound Dorchester* was to determine if the ballot bearing the questioned name was cast by an eligible voter. While here, the Employer may have had a basis to initially question the signature at the count and it preserved the issue by challenging the ballot, the issue of identity and eligibility of the voter has been resolved by the hearing.

Even if it is determined by the Board that an examination of what should constitute Schalamon's signature is required in this circumstance, I find that the record does not establish that Schalamon printed her name on the ballot envelope as the Employer contends. As noted by the Hearing Officer, the Employer's records do not provide an exemplar that is an exact match to what appears on the ballot envelope. Thus, the writing on the back of the envelope is distinctive and Schalamon testified that it is her signature. The records introduced by the Employer to show how Schalamon signed documents also revealed how she printed her name on such forms. The writing that appears on the ballot envelope, after the letter "S" of the last name, is entirely in cursive with connecting letters and does not resemble how Schalamon printed her name on forms where she generally utilized individual letters on all or part of her last name. Schalamon did connect some letters in her printed name at times, but only on a minority of the forms provided by the Employer. Thus, the weight of the documentary evidence in the Employer's records fails to demonstrate that the writing on the ballot envelope is Schalamon's printed name, consistent with her testimony, and does not weaken her testimony in that regard.

Inasmuch as the Employer has failed to demonstrate that Schalamon printed her name on the ballot envelope, and assuming *arguendo* that the identity of the voter is not enough to validate Schalamon's ballot, the remaining question is whether the ballot should be voided because the signature is different than the "squiggly" signature she used on forms. As discussed below, Schalamon credibly testified that the written name on the ballot envelope was her signature, as was the script appearing on her 2013 driver's license and on the documents introduced by the Employer into the record. The Employer contends that it is contradictory for the voter to testify that these can all be her signature, but signatures may vary and the Board has not determined that an individual's distinctive signature must match the particular exemplars that appear on Employer forms in order to be deemed valid. The record evidence considered by the Hearing Officer, including Schalamon's 2013 driver's license and other records in her personnel file, show that her signature has varied somewhat, and that the written name on the ballot envelope is different in most respects than exemplars of her printed name that appear on Employer's Exhibits 6 and 7. Thus, the case can be distinguished from *Thompson Roofing, Inc.*, where there was no apparent dispute that the written name on the ballot envelope was printed rather than signed, and from *College Bound Dorchester, Inc.*, where there was a question about the identity of the voter and thus the authenticity of the signature on the ballot envelope. In that matter, the Board only determined that a hearing was necessary. Here, a hearing was held to ultimately determine whether the voter signed the ballot envelope. Accordingly, and further based on the determinations below, I find that Schalamon's ballot was valid.

B. Applicable case law regarding hearing officer rulings

It is the Board's standard policy to attach great weight to the credibility findings of the trier of fact, given his advantage in observing witness testimony and assessing demeanor in resolving issues of credibility. *See e.g., Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). Thus, the Board will not overrule credibility resolutions unless the clear preponderance of all the relevant evidence establishes that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3rd Cir. 1951). In addition, the Board has consistently held that the failure of the trier of fact to detail completely all conflicts in the evidence does not mean that the conflicting evidence was not considered. *Walker's*, 159 NLRB 1159, 1161 (1966).

With regard to procedural rulings during the hearing, the Board has repeatedly held that a hearing officer has discretion to revoke or refuse to enforce subpoenas that are being used as part of a "fishing expedition" or that would lead to irrelevant or cumulative testimony. *See e.g., Burns Intl Sec. Serv. Inc.*, 278 NLRB 565 (1986), *citing Morrison Turning Co.*, 83 NLRB 687, 689 (1949) and *Modern Upholstered Chair Co.*, 84 NLRB 95, 97 (1949). Similarly, in *Spartan Dep't Stores*, the Board rejected the union's claim that the hearing officer committed prejudicial error by refusing to delay the hearing in order to enforce subpoenas. *Spartan Dep't Stores*, 140 NLRB 608, at fn 2.

Here, I find the Hearing Officer's determinations to be substantiated. The Hearing Officer noted that his findings on witness credibility would be based on testimony and demeanor. (HOR p. 3.) Applying this principal, the Hearing Officer credited Schalamon's testimony that the written name on her ballot envelope is indeed one version of her signature, noting that her testimony regarding her signature as it appears in Employer Exhibits 6 and 7 was consistent with her testimony, which she gave prior to being shown those exhibits, and further noting Schalamon's testimony regarding the written name on her 2013 driver's license was another version of her signature. Furthermore, pursuant to *Walker's*, the omission in the Hearing Officer's report regarding Schalamon's testimony that the name on her Social Security card was not her signature does not equate to a failure by the Hearing Officer to consider the testimony when making his recommendation.¹⁵

The Employer's exceptions regarding the Hearing Officer's rulings are ultimately non-material and insufficient to overturn his crediting of Schalamon concerning her signature. First, the Employer's exceptions with regard to the Hearing Officer's granting of the Petitioner's petition to revoke subpoenaed documents already in the record or in the Employer's possession is consistent with the Board's granting the hearing officer discretion on subpoena production matters under *Burns*. In addition, the Employer made no motion to the Hearing Officer to have the subpoena enforced, a motion that the Hearing Officer would be within his discretion to deny given the duplicative nature of the documents sought. Moreover, the exception to the basis for

¹⁵ In that regard, Schalamon testified "That's my Social Security number with my name on it." When asked if it has her signature on the card, Schalamon testified: "It does not have my signature. It has my name on it." The card appears to have Schalamon's name typed onto it and handwriting appears below the typed name. The Hearing Officer did not cite to this exemplar as a version of Schalamon's signature, and in the absence of further examination on the issue it cannot be concluded that Schalamon testified that she *printed* her name on her Social Security card.

revocation of part of the Employer's subpoena asking for "[t]he original declaration attached to the Union's Statement of Position and correspondence transmitting the same" does not demonstrate irreparable harm.¹⁶ Finally, the Employer's exceptions to the Hearing Officer's sustaining of the Petitioner's objection to the Employer's questioning of Schalamon about the name of the coworker that gave her the declaration was a proper application of the principal in *National Telephone Directory Corp.*, and the record shows that no other line of questioning on the matter of the declaration was curtailed. To the extent that the Employer contends it was prevented from cross-examining the witness about other aspects relating to Union Exhibit 2, including the representations made therein, the document was not introduced for any other purpose than the exemplar, and the record does not demonstrate that the Employer was foreclosed from examining the witness in that regard. Accordingly, I find that the Employer has not provided a sufficient basis to overturn the Hearing Officer's recommendations or other procedural rulings.

IV. DECISION

Based on the above, and having carefully reviewed the entire record, the Hearing Officer's Report and recommendations, and the exceptions and arguments made by the parties, I affirm the Hearing Officer's findings and adopt his conclusions as to the challenges and hearing rulings, to the extent described above. Accordingly, the challenges to the ballots of Mysti Schalamon, Kirsten Belina, Natalia Bennell, Emily Kellogg, Corin Schrock, and Vickie Stevens are overruled. The challenge to the ballot cast by Christina Aangeenbrug is sustained.

V. DIRECTION TO OPEN AND COUNT CHALLENGED BALLOTS

IT IS HEREBY DIRECTED that the ballots of Schalamon, Belina, Bennell, Kellogg, Schrock, and Stevens be opened, commingled, and counted on a date to be determined by the Regional Director occurring at least 10 business days from the date of this Decision.¹⁷ Following the count of ballots, a second revised tally of ballots shall be prepared and provided to the parties.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC a request for review of this Decision. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and

¹⁶ The Hearing Officer revoked the Employer's subpoena on motion by the Petitioner based on its assertion that the original declaration was not in its possession and based on the confidentiality interest that the employee witness had in her protected concerted activity and/or union activity, citing *National Telephone Directory Corp.*, 319 NLRB 420, 421 (1995). However, the fact that Union Exhibit 2 was not relied on by the Hearing Officer as to the content of the document or cited by him as an exemplar makes this at most a harmless error. I do not rely on Union Exhibit 2 in determining that Schalamon signed her ballot and that her name was not printed. Although there is no exact exemplar in the record for Schalamon's name as it appears on the ballot envelope which pre-dated the ballot count, I note that Schalamon's last name resembles the cursive signature on her driver's license.

¹⁷ Pursuant to Section 11364.9 of the Casehandling Manual, a request for review to this decision to open and count the ballots must be filed with the Board within 10 business days of the issuance of the post-election decision.

December 9, 2021

Regulations and must be received by the Board by **December 23, 2021**. If no request for review is filed, the Decision is final and shall have the same effect as if issued by the Board.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued this 9th day of December 2021.

/s/ *Paula S. Sawyer*

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